

1 A. **Right.** Case 2:07-cv-04936-MAM Document 55-8 Filed 10/01/10 Page 1 of 6  
 2 Q. Just to send it in, correct?  
 3 A. **Correct.**  
 4 Q. We're talking about an investigation, not how you report the investigation?

5 A. **Right.**  
 6 Q. There is a difference, isn't there?  
 7 A. **There is.**  
 8 Q. An investigation is what you're doing and how you report what you're doing whether on a written report or a correspondence. It doesn't say that you don't do what the regulations require. Does it?

9 A. **No. It didn't say that.**  
 10 Q. The requirements are that you do your investigation, not write your reports in forty or ninety days, it means wrap up the investigation, doesn't it?  
 11 A. **I don't know if forty days applies to the limited or not, Counsel. I don't think it does. I think there's a lighter requirement in time.**  
 12 Q. They get more time or less time?  
 13 A. **That is the gathering of the materials necessary. That there is not a due date assigned to the limited, if I recall correctly, as it is to a full investigation. Full investigations come with a due date. I don't remember if the limited does but I can be wrong.**

1 Q. I actually read this thing, cover to cover. I couldn't find that. That's why I'm asking you that question.

2 A. **I cannot find anything that says that either.**  
 3 Q. Well, we were on ninety. Assuming I'm correct and you're not, the time limits control. According to the regulations, the Christopher Bush complaint should have been given status reports about his complaint by Hile. Is that true?

4 A. **I don't know unless you show me, sir.**

5 Q. Page 30. See the note?

6 MR. HENZES: A status report by Hile?  
 7 MR. PURICELLI: Yeah. Let me read that to you.

8 BY MR. PURICELLI:

9 Q. When an investigation exceeds ninety days, the investigator, that was Hile, correct? He was the investigator in the Bush complaint?

10 A. **Where are you reading from, sir?**

11 Q. Page 30, the top note?

12 A. **Uh-huh.**

13 Q. Hile was the investigator, right?

14 A. **He was.**

15 Q. So, I'll read his name. When an investigation exceeds ninety days, Hile shall provide periodic status

1 Reports either verbally or in writing to the complainant  
 2 until the investigation has been adjudicated. Did I  
 3 read that correctly?

4 A. **You did.**  
 5 Q. Interpreting, in this case, it meant that Hile  
 6 was required to call Christopher Bush until August 1st,  
 7 when you adjudicated. Is that true?  
 8 A. **No. I don't think it says he provide the status reports. It doesn't say he has to initiate the inquiry.**  
 9 Q. Where?  
 10 A. **Or initiating the correspondence. If Chris would have called, Hile might have done an update.**  
 11 Q. It says clearly here, Major, the investigator  
 12 shall provide?  
 13 A. **Yeah.**  
 14 Q. Are you trying to tell me that the complainant is  
 15 supposed to know this regulation and he can call?  
 16 A. **Sure. I'm not saying he has to know the regulation. He can call and check the status.**  
 17 Q. Did the State Police give Christopher Bush the AR  
 18 Regulations and say, by the way, you have the right to  
 19 call in ninety days?  
 20 A. **No.**  
 21 Q. How is a person supposed to know that?  
 22 A. **I'm not saying he is supposed to know that. I'm**

1 **just telling you that I don't say -- where it says that Lieutenant Hile had the responsibility to contact him and give him that information. If he asked, he would give it to him.**

2 Q. Do you know what fraud is?  
 3 A. **Tell me.**  
 4 Q. In your mind, do you know what fraud is?  
 5 A. **In relation to what? Be more specific, Counsel.**  
 6 Q. Do you agree that fraud could be saying something  
 7 that is not true to cause someone to do something or  
 8 holding back something that you should tell them so they  
 9 can't do it?  
 10 A. **I don't think that any action committed by Lieutenant Hile committed a fraud.**  
 11 Q. Maybe Randy will --  
 12 A. **I look forward to hearing that, being educated by those such as you.**  
 13 Q. Thank you.

14 MR. HENZES: Free of charge, no less.  
 15 MR. PURICELLI: Can we take a short break?  
 16 As a matter of fact, why don't we take a half hour lunch  
 17 break and get some salad.  
 18 -----  
 19 (Whereupon, a short break was taken.)  
 20 -----  
 21 -----  
 22 -----  
 23 -----  
 24 -----  
 25 -----

1 Person Check List, was marked for identification.)  
2  
3 -----

4 BY MR. PURICELLI:

5 Q. Major, I'm handing you what's been marked Hill 7?

6 A. Yes.

7 Q. OM7-2 section dated 10/17/2003. Did I describe  
8 the document correctly?

9 A. You did.

10 Q. Are you familiar with the OM, Operations Manual,  
11 702?

12 A. Somewhat.

13 Q. I take it you didn't review this for today's  
14 deposition?

15 A. I did not.

16 Q. Did you review this for the purposes of your  
17 adjudication?

18 A. Not that I recall, no, sir.

19 Q. Do you recognize it as being the OM 7 Manual  
20 referring specifically to missing children's check list?

21 A. Missing persons check list. It appears to be  
22 such, yes.

23 Q. Do you have any reason to believe I made this up?

24 A. No. I do not.

25 Q. Okay. Now, if we look to special instruction?

1 Q. Can we agree that Tripp never mentioned anything  
2 about the federal law saying children should not be  
3 entered into NCIC?

4 A. We agree.

5 Q. Now, if we go to C2, members shall ensure a  
6 search of the last known location and areas frequented  
7 by the missing person, income and -- well, I'll read it  
8 the way it is, is conducted. And that an attempt to  
9 locate message containing appropriate information, IE  
10 possibly destination, direction of travel, etcetera, is  
11 entered into the CLEAN system. Did I read that  
12 correctly?

13 A. You did.

14 Q. Do you know what that means?

15 A. Yeah.

16 Q. What does that mean?

17 A. Just what it says.

18 Q. Shall look for the person and then send out a  
19 CLEAN message?

20 A. Yes.

21 Q. Was there a CLEAN message sent out?

22 A. I think there was several.

23 Q. Okay. Did any of them indicate where the child,  
24 where they might be going?

25 A. I don't recall seeing that specifically.

1 MR. HENZES: Page?

2 MR. PURICELLI: 39-2.

3 MR. HENZES: Second page.

4 MR. PURICELLI: Second page.

5 BY MR. PURICELLI:

6 Q. There is a 4 that talks about requirement for  
7 entries of a missing person under twenty-one years of  
8 age?

9 A. Uh-huh.

10 Q. We're in agreement that the State Police never  
11 placed any of David Bush's children in the NCIC,  
12 correct?

13 A. Correct.

14 Q. Do you know what the federal law was, as referred  
15 to in 4B?

16 A. Do I know specifically what that refers to?

17 Q. Sure.

18 A. I can't say I do. I believe that I have a guess  
19 as to what it is.

20 Q. I'm not asking you to guess.

21 A. I don't know for sure.

22 Q. Can we agree going through Wizner's report, he  
23 mentions nothing about federal law being the basis for  
24 not entering the children into the NCIC?

25 A. He did not.

1 Q. If we go to 5, it says members shall initiate a  
2 follow up contact with complainant within twenty-four  
3 hours, a report of a missing person to determine if  
4 additional information is available which would  
5 necessitate supplementary searches, interviews or other  
6 investigatory measures. Did I read that correctly?

7 A. You read it correctly.

8 Q. If we look at Wizner's report, does he make  
9 contact with David Bush in twenty-four hours of the  
10 report?

11 A. Not required to, in my opinion.

12 Q. Okay. Can you direct me anywhere in the OM  
13 Manual where there's an exception to that rule?

14 A. It's not a missing person case. It's a  
15 concealment of the whereabouts of a child case. It's a  
16 legitimate apparent defense. And Mr. David Bush  
17 reported it as such and not as a missing persons case.

18 Q. You're saying that OM7-2 doesn't apply to this  
19 case?

20 A. Pretty much, yes.

21 Q. Because he says he knew where the children were?

22 A. He says he knew they were being concealed by the  
23 mother.

24 Q. Did he know where she was concealing them?

25 A. No. He did not.

1 Q. Did he have any idea where they were in the  
2 United States?

3 A. Not that I know of, no.

4 Q. What is the difference between missing and  
5 concealing?

6 A. I think wherever lies the rub between us,  
7 Counsel.

8 Q. As a police officer?

9 A. As a police officer, this isn't a missing persons  
10 case.

11 Q. Because?

12 A. It's a concealment of the whereabouts of a child  
13 case.

14 Q. How did you know the children were with the  
15 mother?

16 A. I think David Bush is a good source and the  
17 sister of David Bush, Sara Bush indicated that Sara was  
18 planning on leaving, not showing up and there's a  
19 history of domestic violations that we talked about, the  
20 history of the custody court matters. All those were  
21 reasonable conclusions that she was in fact concealing  
22 the whereabouts of the child.

23 The totality of the circumstances were, led one  
24 to that appropriate conclusion in my mind.

25 Q. You used the word appropriate?

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1 A. No.

2 Q. And is there any comparable OM Regulation for  
3 concealment, what you're supposed to do when there is an  
4 allegation of concealing the whereabouts of the  
5 children?

6 A. No. I don't think there is.

7 Q. Do you know whether any trooper has been  
8 disciplined under OM7-2 for a failure to place a child  
9 in the missing child data?

10 A. I don't have any direct knowledge that I can  
11 recall.

12 Q. I have a question for you, Major. If you can  
13 turn to OM7-2, 39, page 39.8, we have the State Police  
14 7-0052 form, Pennsylvania State Police, missing person  
15 check list. And if we go to block five, it talks about  
16 abduction by a parent?

17 A. Uh-huh.

18 Q. Or non family member or other family member. If  
19 a person is known to have taken the child, they're now  
20 missing. Is that your theory?

21 A. Yes.

22 Q. Why do you have on the missing child report a  
23 block they can check off in this section when you know  
24 who the child is with if this section does not apply in  
25 this situation?

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1 A. In my mind, Counsel.

2 Q. They went out and talked to the sister. She said  
3 she had no contact with her sister purposely so she  
4 couldn't say where the children were, correct?

5 A. Yes. I believe that was the subject.

6 Q. The sister didn't know if any foul play had  
7 occurred at any time, did she?

8 A. No.

9 Q. In fact, if you go through the totality of the  
10 circumstances, absolutely nobody knew whether foul play  
11 occurred, the wife, mother just was gone with the kids,  
12 right?

13 A. There was no indication of foul play. That would  
14 be an accurate, whatever you call that, an accurate  
15 phrase.

16 Q. But you don't need foul play for a person to be  
17 missing?

18 A. Not necessarily.

19 Q. Missing means you just don't know where they are?

20 A. No. I don't know that there's a definition of  
21 missing person that you and I are going to agree on.

22 Q. I guess not.

23 By the way, if we read the missing persons  
24 section, OM7-2, that doesn't mention a distinction  
25 anywhere between concealment and missing, does it?

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1 A. Because she didn't abduct the children.

2 Q. How do you know she didn't?

3 A. Based on the totality of the circumstances at the  
4 time.

5 Q. Did she have a court order?

6 A. Not at that -- at the time she left, she probably  
7 did have an active court order, yes.

8 Q. Do you know that, factually?

9 A. Yes.

10 Q. You do?

11 A. Yeah. The order expired, I believe in January of  
12 2006. She had full custody of the children up until  
13 that time. She left sometime after that court order was  
14 issued.

15 Q. In the course of your documents, in the course of  
16 your investigation, you collected a series of documents,  
17 court orders and petitions. And you testified to them,  
18 haven't you today?

19 A. I don't know that I testified to any of them in  
20 particular. I testified during the -- they're in the  
21 stack of papers in the investigatory pile, yes.

22 -----

23 (Whereupon Exhibit Nos. Hill 8, Petition for  
24 Gruber Hearing and 9, Petition for Custody, were marked  
25 for identification.)

1 BY MR. PURICELLI:

2 Q. Showing you Hill 8 and 9. Have you ever seen  
3 those documents before?

4 MR. HENZES: 8 and 9.

5 THE WITNESS: I don't know if I have, if  
6 they're in your pile or not, Counsel. I think -- hold  
7 on. I'm checking a second one.

8 MR. HENZES: Brian, I'm going to say  
9 something to you right now and you don't take it the  
10 wrong way but I'm going to put this out there. And I  
11 hope that this isn't the first time you saw that  
12 particular document because if you read what you  
13 identify as 8, your client, Mr. Bush, not Christopher  
14 Bush and I don't blame him for this but David Bush has a  
15 verification attached to this document.

16 MR. PURICELLI: Uh-huh.

17 MR. HENZES: And paragraph 5 revealed that  
18 he knows the children are with the mother. Throughout  
19 this litigation, you have referred to them as missing.  
20 And you referred to the section 28 -- 2908 of the  
21 Pennsylvania Crimes Code.

22 MR. PURICELLI: Is this necessary for the  
23 record? Go off the record.

24 MR. HENZES: No. This is on the record.

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1 MR. PURICELLI: If you continue, I'm going

2 to ask for sanctions for billing this record and not  
3 allowing my deposition.

4 MR. HENZES: I'm putting you on notice right  
5 now. You have peppered this witness about missing.

6 MR. PURICELLI: You continue, I'm going to  
7 seek sanctions.

8 MR. HENZES: You have continued  
9 misrepresenting the nature of what your client's own  
10 investigation, own complaints are on. And that's why  
11 it's missing.

12 MR. PURICELLI: You're on notice, Randy.

13 MR. HENZES: So are you.

14 MR. PURICELLI: We're done playing lawyers.

15 Can we get back now?

16 MR. HENZES: Go ahead.

17 THE WITNESS: I'm having serious trouble  
18 reading number 9. The copy is not very clear.

19 BY MR. PURICELLI:

20 Q. I didn't say that they were pristine. They're  
21 copies of copies. I'm asking if you have ever seen them  
22 before?

23 A. I don't recall.

24 Q. Do you know what a petition for a Gruber hearing  
25 is?

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1 I'm going to put you on notice that if you continue to  
2 push this as a missing child abduction analogy, I'm  
3 going to move for sanctions because your client, not  
4 your, your client is saying in his own document, in his  
5 own court filing that he knows the children are with the  
6 mother. And we're going to refer go this matter as what  
7 it was investigated as, as the concealment of the  
8 whereabouts of children.

9 If we continue to use missing person and we  
10 continue, and you can smirk all you like, I will move  
11 for sanctions. I will put you on notice right now. You  
12 are on notice right now that your client had never  
13 determined them to be missing. It's right in the  
14 document. Read it.

15 MR. PURICELLI: Like your client sitting  
16 next to you, everything is subject for interpretation  
17 and legal argument.

18 MR. HENZES: No, no.

19 MR. PURICELLI: I will wait for you to  
20 finish.

21 MR. HENZES: I am not done. There is  
22 nothing to interrupt what your client said. You have to  
23 accept what he said there. You cannot spin that. This  
24 is a court document. You can't stand in front of the  
25 court and say that is --

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1 A. Not particularly.

2 Q. It looks like a Bates stamped. One of them is  
3 February of 2006?

4 A. Okay.

5 Q. The second one has a date of May '06. It looks  
6 like 4. That is a petition for custody.

7 A. Okay.

8 MR. HENZES: You're looking at the --

9 THE WITNESS: I can't read.

10 MR. HENZES: The one he cannot read.

11 MR. PURICELLI: Well, I can read it and you  
12 can read it.

13 THE WITNESS: Can you read mine, sir?

14 MR. HENZES: Try my copy.

15 MR. PURICELLI: Yeah. May 2006, May 2006,  
16 04, approximately 9:33 a.m.

17 THE WITNESS: May? Where do you see that,  
18 sir?

19 MR. HENZES: Where do you see the time  
20 stamp?

21 MR. PURICELLI: 2006, May 4th.

22 THE WITNESS: I think if you had not known  
23 previously, you --

24 MR. PURICELLI: I read these things all the  
25 time.

THE WITNESS: I'm sorry, sir. I cannot

1 decipher.

2 MR. HENZES: You're saying that this is time  
3 stamped by some court that we -- by somebody you can't  
4 decipher who stamped it.

5 MR. PURICELLI: Well, the totality of the  
6 circumstances tell me that it was probably filed in the  
7 Court of Common Pleas, okay, of my own totality, would  
8 end up there in Tioga County because that is where all  
9 the paperwork is. Taking all the --

10 THE WITNESS: That's right, Counsel. You're  
11 forgetting the Luzerne County paperwork.

12 MR. HENZES: Off the record.

13 -----

14 (Whereupon, a discussion was held off the  
15 record.)

16 -----

17 MR. PURICELLI: It's a mess. That is what  
18 happened when you go to the totality of the  
19 circumstances, doesn't it?

20 THE WITNESS: Counsel, you're trying to lay  
21 this on us?

22 MR. PURICELLI: Yeah.

23 MR. HENZES: Your point?

24 BY MR. PURICELLI:

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1 reviewing all the records?

2 A. Yes, the totality of the circumstances.

3 Q. If you get a call of two men fighting, you said  
4 he punched me first, isn't that self defense?

5 A. Depending on the nature of the circumstances.

6 Self defense may be an appropriate circumstance.

7 Q. Even though there may be an offense, you can  
8 arrest the person?

9 A. Counsel, what is the word I'm looking for?

10 MR. HENZES: Hypothetical situation.

11 THE WITNESS: I need more specificity.

12 BY MR. PURICELLI:

13 Q. What specificity did you have other than the fact  
14 that she had one PFA and a violation of that PFA that  
15 she had a spousal --

16 A. A fear of domestic violence?

17 Q. That she can prove in a court of law?

18 A. I don't think she has to prove it in a court of  
19 law. She has to be in fear of domestic violence. I  
20 think she had a reasonable fear of domestic violence.

21 Q. That means the State Police didn't do anything?

22 A. They did do something.

23 Q. They started a report, right?

24 A. Yeah.

25 Q. Did they locate the children in Virginia?

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1 Q. The point I'm trying to get is there were  
2 petitions filed for custody before or after your  
3 investigation of what Randy likes to say is now  
4 absconding or concealing of the children?

5 MR. HENZES: No. I didn't say that,  
6 absconding. That is a legal term of art.

7 BY MR. PURICELLI:

8 Q. Let me ask you, if a person conceals the  
9 whereabouts of a child, another parent, outside the  
10 state without court approval, are you saying the child  
11 is not supposed to be placed in NCIC and missing?

12 A. Yes.

13 Q. Where does it say that?

14 A. In the section. She had a defense. She was not  
15 committing any crimes. She had a reasonable fear of  
16 domestic violence.

17 Q. How do you know the defense was true?

18 A. It is a reasonable conclusion based -- in fact,  
19 we're lucky it didn't end up in a murder suicide  
20 committed by David Bush against this woman is a miracle.  
21 I think I came to a reasonable conclusion that she had a  
22 defense of the section. She committed no crime  
23 whatsoever, had no legal reason to enter the children as  
24 missing persons.

25 Q. That's your conclusion but it's all based on

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1 A. No. They did not.

2 Q. Why not?

3 A. Because they failed to locate those children.

4 Q. Why did they fail? They had all the resources?

5 A. They did.

6 Q. Why couldn't they locate the children if they  
7 were doing their job, as you say?

8 A. Uh-huh.

9 Q. Why was Officer Bush in Newtown able to find them  
10 but the State Police couldn't?

11 MR. HENZES: You don't want to go there.

12 THE WITNESS: I would give Detective Bush  
13 credit for his ability to manipulate people and to give  
14 him information that should have been protected and use  
15 that information to his advantage.

16 BY MR. PURICELLI:

17 Q. What information did he use that was protected  
18 and shouldn't have been given?

19 A. Getting information from the Social Security  
20 Administration about the location of those children and  
21 probably manipulation of somebody to give that  
22 information out.

23 Q. Where do you get that conclusion from? Probably,  
24 the word you used?

25 A. I said probably.

1 Q. Why do you say that?  
2 A. Because I think generally speaking, there's a  
3 privacy issue with Social Security information. He had  
4 no legal right to it and he got it.

5 Q. How do you know he didn't have a legal right?

6 A. I'm just guessing, Counsel.

7 Q. To be fair, I'll say --

8 A. I give him credit for it.

9 Q. You have no legal training as to privacy laws?

10 A. You can go with that conclusion.

11 Q. It's a yes or no. If you do, I'll ask you about  
12 it. If you don't, you don't?

13 A. I don't know. I may have had some discussion  
14 about various privacy issues at some point in my career.

15 Q. But you also may not have. Is that true?

16 A. That may be true.

17 Q. And you can't direct me to any of the training  
18 that you may have gotten that you say. Can you?

19 A. No.

20 Q. Do you have any training in the Social Security  
21 Regulations rules and law?

22 A. No.

23 Q. Do you always assume things under oath?

24 A. I don't think I always assume things. I think  
25 it's perfectly okay to state what I stated under oath.

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(Whereupon, a short break was taken.)

2 BY MR. PURICELLI:

3 Q. The memo asks for copies or at least the  
4 following reports, F5891081, correct?

5 A. Yes, yes.

6 Q. We've identified that already for the record as  
7 being the Wizner investigation file of the concealments  
8 of the whereabouts of the children investigation?

9 A. Can I just confirm that?

10 Q. Sure.

11 MR. HENZES: Sure. Referring to, it is.

12 THE WITNESS: He is looking for the  
13 attachments to that report.

14 BY MR. PURICELLI:

15 Q. Dated June 28th, 2007, why was Joseph Tripp on  
16 June 28th, 2007 seeking attachments of the report?

17 A. He wasn't. Lieutenant Hile was but Sergeant  
18 Tripp needed to provide the report to Lieutenant Hile  
19 for the investigation and the attachments had been sent  
20 in to the report because it was concluded from  
21 department headquarters, no longer had the attachments  
22 so they sent down to department headquarters to get the  
23 attachment of that report.

24 Q. Do you know that factually or are you just

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1 A. And I probably think that, yeah. I think that's okay.

2 Q. So, you don't know what a Gruber hearing?

3 A. Not specifically, no.

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5 (Whereupon Exhibit No. Hill 10, Memo, was  
6 marked for identification.)

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7 BY MR. PURICELLI:

8 Q. I'm showing you what is marked as Hill 10, the  
9 June 28th, 2007, to from memo to the Director of Bureau  
10 of Records and Identification from Dennis C. Hile. Did  
11 I describe the document correctly, Major?

12 A. Yes.

13 Q. Hile again was the lieutenant assigned to  
14 investigate Christopher Bush's complaint against Tripp?

15 A. Yes.

16 Q. The requesting party, personnel to be specific,  
17 noted on this memo is Sergeant Joseph Tripp, correct,  
18 the bottom line entry?

19 A. Yes.

20 Q. And this particular memo to the Director from  
Hile indicates the requesting personnel?

21 A. May I have a moment, Counsel?

22 Q. You may.

-----

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1 assuming that?

2 A. I don't know the difference.

3 Q. Well, you were present at Tripp's deposition?

4 A. Yes.

5 Q. You don't recall him testifying he needed to  
6 complete his report about Hile's investigation?

7 A. That's what I just said.

8 Q. The person requesting it really is Tripp so he  
9 can have it. He is going through Hile. Is that fair?

10 A. The person requesting it is Lieutenant Hile. He  
11 is the one that is making the request. It says  
12 requesting person is Sergeant Tripp. The combination of  
13 the two of them are asking for attachments to the  
14 report. I don't understand the distinction.

15 Q. Why would Sergeant Tripp need records to give a  
16 statement to Hile about whether or not he did or didn't  
17 enter the children into NCIC when he did, they know he  
18 did?

19 A. I have no idea what you're referring to. He  
20 wanted the reports.

21 Q. Let me help you.

22 A. Okay.

23 Q. Hile's sole purpose was to investigate the  
24 veracity, one way or the other of Christopher Bush's  
25 complaint against Tripp, right?